

36064
DO

SERVICE DATE – JULY 27, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 10X)

NEW YORK CENTRAL LINES, LLC–ABANDONMENT
EXEMPTION–IN WORCESTER COUNTY, MA

Decided: July 26, 2005

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) (collectively applicants), filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service for NYC to abandon and CSXT to discontinue service over approximately 4.2 miles of railroad between milepost QBU-00 and milepost QBU-4.2 from Fitchburg to Leominster, in Worcester County, MA. Notice of the exemption was served and published in the Federal Register on May 30, 2002 (67 FR 37911). On June 28, 2002, a decision and notice of interim trail use or abandonment (NITU) was served, reopening the proceeding and authorizing a 180-day period for the Cities of Leominster and Fitchburg (Cities) to negotiate an interim trail use/rail banking agreement with applicants for the entire line. At the request of CSXT, the negotiating period under the NITU was extended several times; the latest extension decision, served on February 7, 2005, extended the negotiation period until July 22, 2005. The February 7, 2005 decision also extended the deadline for CSXT to file its notice of consummation until September 19, 2005.

By letter filed on July 22, 2005, CSXT requested an extension of the NITU negotiating period until January 18, 2006, stating that the applicants have not consummated the abandonment and have been unable to finalize negotiations but desire to continue negotiations for the acquisition of the right-of-way. Additionally, CSXT requested an extension of the consummation notice filing deadline until March 16, 2008.

Even if a negotiating period expires, when a carrier consents to continuing negotiations and has not consummated abandonment of the line, the Board continues to have jurisdiction to grant an extension. Under the circumstances, an extension of the negotiation period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d STB, 654, 659 (8th Cir. 1996) cert. denied, 519 U.S. 1149 (1997). According, the NITU negotiation period will be extended to January 18, 2006, and the consummation deadline will be extended to March 19, 2006.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CSXT's request for an extension of the negotiating period and its request for an extension of time to exercise abandonment authority is granted.
2. The negotiating period under the NITU is extended to January 18, 2006.
3. The authority to abandon must be exercised on or before March 19, 2006.
4. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary